

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID MICHAEL GLATTS,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 09-29
)	
SUPERINTENDENT LOCKETT; MR.)	Chief Magistrate Judge Lenihan
MATTHEWS (AOD Director); DR.)	
CAIRINS, Director of Psychology)	
Department; MS. KWISNEK (ADA)	
Facilitator Director); DEPUTY)	
SUPERINTENDENT TREVOR)	
WINGARD; DR. McGRAFF (Medical)	
Director); PRISON HEALTH SYSTEMS)	
(PHS),)	
)	
Defendants.)	Re: ECF Nos. 65 and 68

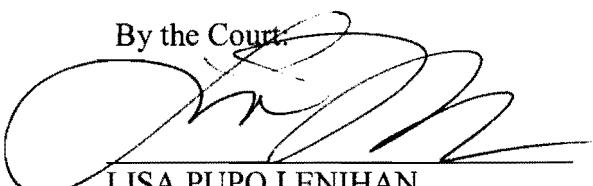
ORDER

AND NOW this 28th day of February, 2011, it is hereby **ORDERED** that the Medical Defendants' Motion to Dismiss, ECF No. 65, filed pursuant to 12(b)(6) is **GRANTED** and Plaintiff's claims against PHS are **DISMISSED WITH PREJUDICE**; as is Plaintiff's Eighth Amendment claims against Dr. McGrath. Plaintiff's claims against Dr. McGrath for retaliation are **DISMISSED WITHOUT PREJUDICE**.

It is further **ORDERED** that the DOC Defendants' Motion to Dismiss, ECF No. 68, is **GRANTED IN PART and DENIED IN PART**. It is **GRANTED** as to Plaintiff's Eighth Amendment claims, which are dismissed **with prejudice** against all DOC Defendants and it is **GRANTED** as to Plaintiff's Title II ADA claims against Defendants Matthews, Price, Lockett, Wingrad and Seckers in their personal capacities but it is **DENIED** as to these five defendants in

their official capacities. It is also **GRANTED** as to Plaintiff's Retaliation claims against the DOC Defendants, albeit without prejudice. It is also **GRANTED** as to Plaintiff's claims against the following DOC Defendants: Jeffrey Beard, Alan Fogel, Raymond Sobina, Lockett, Wingard, and Deputy Superintendent Seckers with prejudice as the Court concludes that amendment as to them would be futile. Accordingly, even if Plaintiff amends his complaint, the following party-Defendants are dismissed as parties: PHS; Jeffrey Beard; Alan Fogel; Raymond Sobina; Mr. Lockett; Mr. Wingard, and Deputy Superintendent Seckers.

It is further **ORDERED** that Plaintiff shall be granted until March 21, 2011, to amend the Complaint to plead all facts necessary to state a retaliation claim against the remaining Defendants upon which relief can be granted. Any Amended Complaint must contain all claims against all remaining parties as that will be the document on which the lawsuit progresses forward. Plaintiff may not add any facts in an effort to revive his Eighth Amendment claims because those claims are dismissed with prejudice. In the absence of amendment by March 21, 2011, Plaintiff's retaliation claims will be dismissed with prejudice. In the event of amendment, Defendants' Motion(s) to Dismiss may be re-filed, at Defendants' discretion, within twenty (20) days from the date of the Amended Complaint being filed.

By the Court:

LISA PUPO LENIHAN
Chief United States Magistrate Judge

cc: David Michael Glatts
GZ-0144
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Counsel of Record via CM-ECF